IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. 28579-M of 2007

Date of Decision: 07.05.2007

Ajmer Singh

.... Petitioner

Versus

Pritam Singh and others.

... Respondents

CORAM : HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mrs. R.P. Dudeja, Advocate,
for the petitioner.

S.D. Anand, J.

The petitioner is an accused in a case under Section 138 of the Negotiable Instruments Act. The defence evidence in the matter was ordered to be closed by the learned Trial Magistrate vide order 09.04.2007 (Annexure P-1), which is reproduced as under for facility of reference:-

> "Despite last and final opportunity, no evidence in defence has been produced. Adjournment prayed which has been vehemently opposed. Perusal of file makes out that statement of accused under Section 313 Cr.P.C. was recorded on 24.03.2006 and thereafter this case was posted for defence evidence of the accused. For almost one year this case is lingering on for defence evidence of the accused vide order dated 28.2.2007 adjournment was granted subject to payment of Rs. 1,000/- as costs and it was made clear that no further adjournment shall be granted. However, 22.03.2007 as counsel

> for accused desired to examine a handwriting expert, hence, at this request one more opportunity was afforded to the accused for today. Today no evidence in defence is present. It is 3.30 p.m. whenever case is called the accused appears in the court, goes out to sit in the varandah. As despite last and final opportunity no defence evidence is present and as accused has also failed to pay the costs of adjournment, hence, finding no justification to adjourn this case further, remaining defence evidence of accused is closed by order. Case is adjourn to 30.4.2007 for arguments."

The petitioner is in revision requesting for the affording of an opportunity for adducing defence evidence. The plea raised is that the learned Trial Court rushed to close the defence evidence without waiting for the handwriting expert.

I have heard learned counsel for the petitioner and have gone through the record.

The learned counsel for the petitioner does not challenge the correctness of the factual averments noticed in the course of the impugned order and quoted in para of this order. She otherwise argues that the report of the handwriting expert, if allowed to be produced, would nail the prosecution plea. The further argument advanced by her is to the effect that the Court concerned had been told on 09.04.2007 about the inability of the handwriting expert to attend the Court at Ludhiana but the Court did not take notice thereof.

The plea noticed herein above deserves outright dismissal, being plainly bereft of merit. The fact that the defence had been given a

number of opportunities to adduce evidence and also the fact that last and final opportunity had been afforded to the petitioner-accused for 09.04.2007 is not in dispute. Further, the fact that the case had been lingering for recording of defence evidence for the last about one year, that the adjournment granted on 28.02.2007 was subject to the payment of Rs. 1000/- as costs and that costs have not been paid is also beyond the pale of controversy. The petitioner-accused was trying to take the Court for a ride. The impugned order notices that whenever the case would be called out, the accused would once put in appearance and, thereafter, go out and sit in the verandah. The adoption of such an attitude is foreign to the system of dispensation of justice.

In the light of the foregoing discussion, the impugned order directing closure of defence evidence under the orders of the Court cannot be faulted on any valid score. The defence cannot insist upon the grant of unlimited opportunity for adducing its evidence. The relevant complaint had been filed in the year 1999. The petition is totally devoid of merit and is ordered to be dismissed.

May 07, 2007 (S.D. Anand)
vkd Judge